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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 386.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

EDWARD SAMUEL, TRADING AS EDWARD SAMUEL & COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED AUGUST 30, 1887.

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1 UNITED STATES,
Eastern District of Pennsylvania, set:

The President of the United States to the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between The United States of America, plaintiff in error, and Edward Samuel, trading as Edward Samuel and Company, defendant in error, in a plea of trespass on the case, a manifest error has intervened to the great damage of the said The United States of America, as in their complaint has been stated--and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf: You are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable, the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Philadelphia, this fourth day of December, A. D. one thousand eight hundred and eighty-six, and in the one hundred and eleventh year of the Independence of the said United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To Edward Samuel, trading as Edward Samuel & Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein the United States of America is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 21st day of December, in the year of our Lord one thousand eight hundred and eighty-six.

WM. BUTLER, *Judge.*

3 I accept service of this writ for defendant in error, and direct that my appearance be entered for him.

JOHN SAMUEL,
216 *S. 3d St., Philadelphia.*

DEC. 23, 1886.
3929——1

4 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
vs.
EDWARD SAMUEL, TRADING AS EDWARD SAMUEL and Company.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1886, No. 3.

It is thus contained:

Be it remembered that on the twenty-third day of July, in the year of our Lord one thousand eight hundred and eighty-six, the United States of America, by its attorney, John K. Valentine, esquire, comes into
5 court here and sues forth therefrom a writ of error to the district court of the United States, eastern district of Pennsylvania, against Edward Samuel, trading as Edward Samuel and Company, which, with the endorsement and return thereto, is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

To the judge of the district court of the United States for the eastern district of Pennsylvania, greeting:

Because that, in the record and process and also in the rendering of judgment in a suit before you between the United States of America, plaintiff, and Edward Samuel, trading as Edward Samuel and Company, defendant, in a plea of trespass on the case, a manifest error has intervened to the great damage of the said United States of America as in its complaint has
6 been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner and that full and speedy justice should be done to the party aforesaid in this behalf:

You are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, sitting at Philadelphia, Pennsylvania, on the first Monday of October next (1886), that, the record and process aforesaid being inspected, they may cause what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Philadelphia, this 23rd day of July, A. D. 1886, and in the 111th year of the Independence of the said United States.

[SEAL.]

SAMUEL BELL,
Clerk Circuit Court, U. S.

7 (Endorsed:) The United States of America, plaintiffs in error, vs. Edward Samuel, trading, &c., defendants in error. Writ of error. Brought into clerk's office, dist. ct. U. States, Oct. 2, 1886.

8 THE UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

To Edward Samuel, trading as Edward Samuel and Company, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, to be holden at Philadelphia on the first Monday of October next (1886), pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern district of Pennsylvania, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned shall not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand this 23 day of July, A. D. 1886.

WM. BUTLER, *Judge.*

9 (Endorsed:) I accept service of within writ and request the clerk of the court to enter my appearance for d'f't. John Samuel, att'y for d'f't. Sep. 10, 1886. 3 Oct., sess. 1886. C. C. U. S., E. D. of Pa. The United States of America, plaintiffs in error, vs. Edward Samuel, trading, &c. Citation. Brought into clerk's office dist. ct. U. States, Oct. 2, 1886.

10 In the district court of the United States for the eastern district of Pennsylvania, of May sessions, 1880. No. 30.

Pleas before the honorable the judge of said court.

It is thus contained:

THE UNITED STATES OF AMERICA
vs.
EDWARD SAMUEL, TRADING AS Edward Samuel and Company. } Summons case.

Be it remembered that on the 4th day of June, A. D. 1880, upon præcipe filed by John K. Valentine, esq., attorney for the United States for the eastern district of Pennsylvania, a writ of summons case issued, which, with the marshal's return thereto, is in the words and figures following, to wit:

11 UNITED STATES,
Eastern District of Pennsylvania, ss:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

We command you that you summon Edward Samuel, trading as Edward Samuel and Company, late of your district, if he may be found therein, so that he be and appear before the judge of the district court of the United States for the eastern district of Pennsyl-

[SEAL.]

vania, at a session of the same court to be holden at Philadelphia, on the first Monday of June inst., to answer to the United States of America of a plea of trespass on the case, &c. And have you then there this writ.

Witness the honorable William Butler, judge of said court, at Philadelphia, this fourth day of June, A. D. 1880, and in the one hundred and fourth year of the Independence of the United States.

W. W. CRAIG,
Pro Clerk of District Court.

12 JUNE 5, 1880.

Served by giving a true and attested copy of the within writ to Edward Samuel, and making known the contents thereof to him.

So answers

JAMES N. KERNS,
U. S. Marshal,
Per C. MCCORMICK,
Deputy.

13 And afterwards, to wit, on the 27th day of January, A. D. 1881, John K. Valentine, esq., attorney as aforesaid, declared against the said Edward Samuel, trading as Edward Samuel and Company, in his plea aforesaid, in the words and figures following, to wit:

In the district court of the United States for the eastern district of Pennsylvania, of May sess., 1880. No. 30.

UNITED STATES
vs.
EDWARD SAMUEL ET AL.

EASTERN DIST. OF PENNA., *ss:*

Edward Samuel, trading as Edward Samuel and Company, defendant, late of the district aforesaid, was summoned to answer the United States of America, plaintiffs, of a plea of trespass on the case, &c.

Whereupon the said plaintiffs, by John K. Valentine, esquire, their attorney, complain for that, whereas.

14 And also for that whereas the defendant on the fourth day of November, in the year of our Lord one thousand eight hundred and seventy-nine, at the county aforesaid, was indebted to the plaintiff in five thousand dollars for goods, then and there sold and delivered by the plaintiffs to the defendant at his request.

And also in the further sum of five thousand dollars for goods then and there bargained and sold by the plaintiffs to the defendant at his request.

And also in the further sum of five thousand dollars for work then and there done and materials for the same provided by the plaintiffs for the defendant at his request.

And also in the further sum of five thousand dollars for money then and there lent by the plaintiffs to the defendant at his request.

And also in the further sum of five thousand dollars for money then

and there paid by the plaintiffs for the use of the defendant at his
15 request.

And also in the further sum of five thousand dollars for money then and there had and received by the defendant for the use of the plaintiffs.

And also in the further sum of five thousand dollars for money found to be due from the defendant to the plaintiffs on an account then and there stated between them.

And also in the further sum of five thousand dollars for interest then and there due and payable for the forbearance by the plaintiffs at the defendant's request, for moneys before then due and owing from the defendant to the plaintiffs.

And also in the further sum of five thousand dollars, like lawful money, then and there due to the said plaintiffs by the said defendants for customs duties upon a certain importation of scrap-iron, to wit, one
16 hundred and one tons seven hundred-weight of scrap-iron, imported into the United States at the port of Boston, from the port of West Hartlepool, in the steamer S. S. Averill, said customs duties then and there amounting to the sum of sixteen hundred and thirty-seven dollars and ninety-four cents.

And also in the further sum of five thousand dollars, like lawful money, then and there due to the said plaintiffs from the said defendants by reason of the failure of the said defendants to pay to the said plaintiffs the sum of sixteen hundred and thirty-seven dollars and ninety-four cents then and there due by the said defendant to the said plaintiffs for customs duties upon a certain importation of scrap-iron, to wit, one hundred and one tons seven hundred-weight of scrap-iron, imported by said defendants into the United States at the port of Boston, from the port of West Hartlepool, in the steamer S. S. Averill.

17 And the defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the several last-mentioned premises, respectively, then and there promised the plaintiffs to pay them the said several last-mentioned moneys, respectively, on request; yet the defendant hath disregarded his promises, and hath not paid any of the said moneys, or any part thereof, to the damage of the plaintiffs five thousand dollars.

And therefore they bring suit, &c.

JOHN K. VALENTINE,
Attorney for the United States.

And afterwards, to wit, on the 15th day of February, A. D. 1881, the said defendant, Edward Samuel, trading as Edward Samuel and
18 Company, by his attorney, John Samuel, esq., makes his plea in the words following, to wit:

Defendant pleads non assumpsit.

JOHN SAMUEL,
For Def't.

And afterwards, to wit, on the 25th day of February, A. D. 1886, it is ordered that a jury come and try the issue joined in this case.

And thereupon, on the same day, come the parties aforesaid, by their

attorneys aforesaid, and the jurors of the jury aforesaid, being called, likewise come, to wit,

1. John S. Davis,
2. Philip Wright,
3. Fred'k James,
4. Chas. W. Higgins,
5. Knews Finney,
6. Henry C. Travilla,
7. Ellis Bachman,
8. Amandus Lutz,
9. Wm. M. Jacobs,
10. John E. Weitzel,
11. Sam'l G. De Turk,
12. Abraham Sorner,

19 who are duly impanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this cause between the United States of America, plaintiff, and Edward Samuel, trading as Edward Samuel and Company, defendant.

And afterwards, to wit, on the 26th day of February, A. D. 1886, the jurors aforesaid, upon their oaths and affirmations aforesaid, do say that upon the issue joined in this cause they find for the defendant.

And afterwards, to wit, on the 2nd day of March, A. D. 1886, comes John K. Valentine, esq., attorney for the United States, and moves the court for a new trial, and assigns the following reasons in support thereof:

1. That as the evidence showed that there was no protest within
20 ten days after the ascertainment and liquidation of the duty, this ascertainment and liquidation was final and conclusive as to the amount of the duty, and the jury should have been so instructed.

2. That as the evidence showed that the ascertainment and liquidation were made on the 24th day of December, 1879, and that no protest was made until the 7th day of January, 1880, this protest was not made within the time required by law, and therefore the ascertainment and liquidation were final and conclusive as to the amount of the duty, and the jury should have been so instructed.

3. That the protest did not set forth, distinctly and specifically, the grounds of objection to the collector's decision as required by law,
21 and that therefore the ascertainment and liquidation were final and conclusive, and the jury should have been so instructed.

4. That as no appeal was made in the case the jury should have been instructed that the ascertainment and liquidation were final and conclusive as to the amount of the duty.

5. That the verdict was against the law.

6. That the verdict was against the evidence.

And afterwards, to wit, on the 23rd and 24th days of June, A. D. 1886, the cause is heard by the court upon the said motion of the United States, plaintiff, for a new trial and on the reasons in support thereof, and after argument thereon by the counsel for the respective parties, plaint-
22 iff and defendant, the new trial is refused, and the reasons are dismissed.

And thereupon it is considered and adjudged that the said plaintiffs, the United States of America, take nothing by their said writ, and that the said defendant, Edward Samuel, trading as Edward Samuel and Company, do go thereof without day.

And afterwards, to wit, on the 2nd day of October, A. D. 1886, a bill of exceptions, duly signed by the honorable the judge of the court here,

as also an assignment of errors, and a prayer for reversal of judgment being filed, are in the words and figures following, to wit:

23 In the district court of the United States for the eastern district of Pennsylvania. Of May session, 1880. No. 30.

THE UNITED STATES OF AMERICA
vs.
EDWARD SAMUEL, TRADING AS EDward Samuel and Company.

Be it remembered, that in the said term of May, A. D. 1880, came the said plaintiff into the said court and impleaded the said defendant in a certain plea of trespass on the case, &c.; in which the said plaintiff declared (prout narr.,) and the said defendant pleaded (prout pleas.) And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid, before the honorable William Butler, judge of the said court, on Thursday, the twenty-fifth day of February, A. D. 1886, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly impannelled (prout list of jurors;) at which day came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury empannelled to try the said issue, being also called, came and were then and there in due manner chosen, and sworn or affirmed, to try the said issue; and upon the trial the counsel of the said plaintiff offered and read in evidence the deposition of witnesses taken on the 2nd and 3rd days of December, 1885, at Boston, in the State of Massachusetts, before Henry L. Hallett, a commissioner of the circuit court of the United States for the district of Massachusetts, as follows:

24 District court of the United States for the eastern district of Pennsylvania.

THE UNITED STATES
vs.
EDWARD SAMUEL, TRADING AS EDWARD SAMuel & Co.

UNITED STATES OF AMERICA,
District of Massachusetts:

Be it remembered that on the 2nd and 3rd days of December, A. D 1885, at Boston, in said district, before me, Henry L. Hallett, a commissioner in, of the circuit court of the United States for the district of Massachusetts, personally appeared Joseph H. Barnes, William Monroe, George W. Whall, John M. Fiske, and George Keyes, witnesses for the United States in the above-entitled cause, and the said witnesses being first duly sworn to testify the whole truth relative to the issue, did
25 give the several depositions hereto annexed, which were by them read over and signed in my presence.

I certify that these depositions hereto annexed were taken in pursuance of a notice, a copy of which is hereto annexed, served on John Samuel, esq., of counsel for the defendant.

That the said Samuel was present at the taking of said depositions on behalf of the defendant, and that George P. Sanger, esq., attended as counsel for the U. S.

I have retained the said deposition in my possession for the purpose of forwarding the same to the court for which they were taken.

I further certify that I am not of counsel and have no interest in said suit.

In testimony whereof I have hereto set my hand and seal this 8th day of December, A. D. 1885.

[SEAL.] HENRY L. HALLETT,
U. S. Commiss'r, Mass. Dist.

26 Deposition of WILLIAM MUNROE, in answer to interrogatories propounded by Geo. P. Sanger, esq., of counsel for the United States. (Dec. 2, 1885.)

1. Int. What is your name, age, and occupation, and residence?

Ans. Wm. Munroe; age, 39; I am a custom-house broker, and reside in Belmont; I am a member of the firm of Stone and Downer, and was so in 1879.

3. Int. Did you ever see these papers, "Exhibit A" and "Exhibit B;" and, if so, when did you first see them?

Ans. I should say we received "Exhibit A" on November 12, 1879; I made up "Exhibit B" from "Exhibit A" on the same day. I will read what I wrote of "Exhibit B," viz: "E. Samuel & Co., S. S.
27 Averill, Westhartlepool, Nov. 4, '79. Lot of wrought scrap iron, 101.7.0.0 tons. £428 10s. 4d. E. Samuel & Co. W. Munroe, att'y." This is all I wrote on the paper. On the back of the exhibit is my oath, written and signed by me before Deputy Collector Barnes, Nov. 12, 1879.

3. Int. In making this entry and oath you were acting as the att'y of whom?

Ans. E. Samuel & Co., the def'ts in this case.

4. Int. Did you ever see the paper before now shown you and marked "Exhibit C;" and, if so, when and under what circumstances?

Ans. I should say that I received it some time in January, 1880. We received this to cancel a bond; it is necessary to have the owner's oath on the entry; when I presented "Exhibit B" it had not the owner's
28 oath thereon; I gave a bond signed E. Samuel & Co., by W. Munroe, att'y, to produce that oath. This paper, "Exhibit C," is that oath, and when it was delivered at the custom-house the bond was cancelled, Jan., 1880, as appears by the stamp on the face of "Exhibit B."

(The Exhibits A, B, & C are offered and put in evidence, to be attached to the depositions now taken.)

5. Int. Do you know where the Averill discharged this iron?

Ans. Caswell wharf, Charlestown district.

WM. MUNROE.

29 Deposition of JOSEPH H. BARNES, in answer to interrogatories propounded by Geo. P. Sanger, esq., of counsel for the United States. (Dec. 2, 1885.)

1 Int. What is your name, age, and occupation, and residence?

Ans. Joseph H. Barnes; I am 52; I am deputy collector of customs for the port of Boston; reside in Boston.

2. Int. How long have you been such deputy collector?

Ans. Since March, 1874.

3. Int. Were you on duty in November and December, 1879?

Ans. I was.

4. Int. Please look at these papers marked "Exhibit A" and "Exhibit B" and state what they are.

Ans. Exhibit A is an invoice covering certain wrought scrap iron
30 as per invoice, consigned to Messrs. E. Samuel & Co., Philadelphia, certified by the consul of the U. S. at London, England, on October 21st, 1879, the consular invoice number being 1140. "Exhibit B" is an inward foreign entry, made by E. Samuel & Co., presented at the Boston custom-house November 12, 1879, by Wm. Munroe, att'y for E. Samuel & Co., and covering an importation by the steamer "Averill," arrived Nov. 4th, 1879, said importation being entered as a lot of wrought scrap iron; the manifest number on both papers is 2138.

5. Int. When did you first see those papers, under what circumstances, and what was done?

Ans. From the record, and not from my recollection of course, I first saw those papers November 12, 1879, at which time Mr. Wm. Munroe, the att'y for E. Samuel & Co., presented them to me for the pur-
31 pose of having the oath administered, and I did administer the oath to said Munroe on that day, Nov. 12, 1879, as appears by my certificate on Exhibit B. My certificate on "Exhibit A" indicates that the goods therein described were duly entered at the custom house Nov. 12, 1879.

6. Int. What course do these papers take after they leave you?

Ans. Ordinarily they go into the hands of an entry clerk, so called, who examines and compares the papers, observing whether the entry is made to conform with the invoice, noting upon each the rate of duty to which these goods are supposed to be subject, and placing upon the papers, various marks and memorandums in the line of his duty. This is the ordinary course; but sometimes they are examined by the clerk before coming to the deputy collector; either course is allowed. There is
32 a memorandum on both exhibits, "Ex. on wh'f. M. A. M." The initials, M. A. M. are the initials of Martin A. Munroe, and at that time entry clerk at the Boston custom-house, and the memorandums are to the best of my knowledge and belief in M. Munroe's handwriting, and the memorandum means that the appraiser is to examine the goods on the wharf.

Cross-examination by JOHN SAMUEL, for def't:

7. X Int. Besides the words, "Ex. on wh'f. M. A. M.," on "Exhibit A" are the words in blue ink "Rate ch'g'd as per report," and at the bottom of the exhibit in red ink the following: "Boston, Nov. 18, 1879. Note change in rate. Estimated T. $67\frac{3}{11}$ cwt., new punchings, clippings,

and bar ends, 1c per ℔; estimated 33″ 16″, old scrap iron $8 per
33 ton." Were both these memorandums on the exhibit when it first came into your hands?

Ans. I know perfectly well from the nature of the business they could not have been there. They form no part of the original invoice. They were made by custom-house officials. The words in blue ink, "Noticed D," were also made by a custom-house official.

8. X Int. On "Exhibit B," the inward foreign entry, was any of the writing or figures on its face in blue ink on it when first presented to you, or afterwards made by custom-house officials?

Ans. Apparently none of the writing or figures in blue ink were on it when first presented to me, but such writings and figures were made afterwards by custom-house officials; such would be the usual course of procedure and I see nothing in the case to indicate that the usual
34 course was not followed.

9. X Int. What do the red stamp on face of "Exhibit B, custom-house, Boston, paid Nov. 12, 1879, &c.," mean?

Ans. It mean that the cashier at the custom-house collected on the date named in the stamp the estimated duties on the merchandise.

10. X Int. That would mean, would it not, that that money was paid after the weighing of the iron by the custom-house weigher, which resulted in the shortage of over eight tons from the original invoice as shown by the blue figures on "Exhibit B?"

Ans. No, sir; it would not indicate that.

11. X Int. Could that payment have been made before the weighing of the iron by the custom-house weigher?

35 Ans. Yes, sir; it could be, and ordinarily is.

12. X Int. Do you say that the custom is to receive the duties which are collected on goods by weight before the goods are weighed?

Ans. Yes, sir; that is the custom. I may add that it is the custom to receive the duties in the first instance on the weight as named in the invoice; and later, that is to say, after the goods have been weighed by the U. S. weigher, and the account with the importer is then adjusted on the basis of the weigher's return.

13. X Int. Is there nothing on "Exhibit B" which enables you to say whether the payment of Nov. 12 was made before or after the weigher's return?

Ans. There is that on "Exhibit B" which enables me to say
36 that the payment on Nov. 12 was made before the goods were weighed, or at least before the weigher's return had been acted upon. In other words, the payment of Nov. 12, 1879, is a payment upon the weight of the iron, as stated in the invoice, and is known at the custom-house as the estimated duty on the invoice weight.

14. X Int. What does the red stamp on "Exhibit B, examined Nov. 12, 1879," mean?

Ans. It means that the paper having passed the collector's office at the custom-house was on Nov. 12th, 1879, examined and verified at the naval office in the Boston custom-house.

JOSEPH H. BARNES.

37 Depositions of GEORGE F. WHALL, in answer to interrogatories propounded by George P. Sanger, esq., of counsel for the United States (Dec. 2, 1885).

1. Int. What is your name, age, occupation, and residence?

Ans. George F. Whall; age, 66; I am an inspector in the Boston custom-house; reside in Needham, Mass.

2. Int. Were you in the Boston custom-house in 1879 & '80; and, if so, in what capacity?

Ans. Yes, sir; I was a U. S. weigher.

3. Int. Whether or not you weighed the cargo of the steamer "Averill," that arrived in Boston some time in Nov., 1879?

Ans. Yes, sir; I did, and made report upon it.

4. Int. Will you look at the paper marked "Exhibit D" and see what it is?

(The paper is put in evidence.)

38 Ans. It is my return as weigher of what I weighed out of the "Averill;" my return is dated Nov. 26, 1879.

5. Int. Did you weigh any merchandise said to be consigned to E. Samuel & Co.; if you did, what was the merchandise and what its weight?

Ans. Yes, sir; I did; it was scrap-iron; its weight was 93 tons 1 cwt. 1 quarter and 26 lbs.

6. Int. Did you make all the figures on that return?

Ans. I did not.

7. Int. By whom were those figures made, or any of them?

Ans. All the figures made in the same ink as my signature were made by my clerk; those in blue and red ink were made by other parties.

39 8. Int. What did you have to do in the making of that return, and what do you know about the correctness of the figures given by your clerk?

Ans. All the weigher's returns have to be signed by the weighers; before he signs his return there is a dock-book with all the figures and permits called for on the vessel, and that book is examined by my clerk, and then by myself; then it goes up into the surveyor's department, where it is re-examined; then it goes into the naval office, re-examined there again, then returned to my desk, and if found correct the return is made to correspond with the book.

(Mr. Samuel, on behalf of the def't, objects to the weigher's return as evidence, as not being the best evidence of the facts therein contained, but being made up by a clerk from entries in a dock-book.)

40 9. Int. Who was your clerk at that time?

Ans. I don't recollect.

10. Int. Were you present at any of the time of the discharge of the scrap-iron from the "Averill"?

Ans. I was.

11. Int. Whether it was all discharged on one day or on different days?

Ans. I don't recollect.

12. Int. Whether this return, "Exhibit D," is your official return of the weighing of that vessel?

Ans. It is.

13. Int. Whether in weighing this scrap-iron it comes all at once from the vessel?

Ans. I can't say. I didn't weigh it until it was all on the wharf. I didn't begin to weigh it until then, if my memory serves me right.

41 14. Int. Did you weigh any of it yourself personally?

Ans. No, sir.

Cross-examination by JOHN SAMUEL, Esq., for def't:

15. X Int. Who did weigh it?

Ans. It was weighed on teams and carts by two or three of my assistants.

16. X Int. Name them and give their residences.

Ans. J. H. Edwards, of Charlestown, he is now an assistant weigher in the custom-house. I think, but am not sure, that George H. Wheeler was one. He is now at work at the custom-house; I am not sure who the third one was, if I had one.

17. X Int. When did you commence weighing the iron; I mean the date?

42 Ans. That I couldn't say because we had to wait for cars and teams.

18. X Int. Can you say how long after the vessel ceased discharging you commenced to weigh?

Ans. No, I can not; but I think it was some time.

19. X Int. How soon after you ceased weighing was this general return made up by your clerk from the dock-book?

Ans. I don't recollect.

20. X Int. Who made the entries in the dock-book?

Ans. The assistant weigher who weighed the cargo, one of the two I have mentioned.

21. X Int. When this return is made in this way, the man who actually weighed made the entries in the dock-book, your clerk took
43 the dock-book and from it made up the figures on this return, which you then signed. Is this correct?

Ans. Yes, sir; after the papers had gone through the hands I have mentioned.

22. X Int. You were at Caswell's wharf and saw this scrap-iron?

Ans. Yes; a great many times.

23. X Int. There were two invoices of scrap-iron on the Averill, were there not.

Ans. Yes, sir.

24. X Int. Did you see all the scrap-iron that was taken out of the Averill before your assistants began to weigh it?

Ans. There was some of it that was covered up by pieces of board and rubbish so that I couldn't see it at all, and I think there was some snow on it.

25. X Int. Was all the iron that came out of the Averill, that
44 is to say, Bingham's lot and Samuel's lot, lying together, or were the two invoices kept separate and apart on the wharf?

Ans. I get my information from the inspector; he says this lot is Bingham's and that lot is Samuel's. There were three piles.

26. X Int. You have said that you saw the scrap-iron which came out of the Averill lying on Caswell's wharf. Can not you state whether the

separate invoices mentioned in your general return were separate on the wharf?

Ans. I went by what the inspector told me; that was my authority to weigh.

27. X Int. Who was the inspector?

Ans. I don't recollect.

28. X Int. Was all the scrap-iron weighed on Caswell's wharf?

Ans. No, sir; it was not.

45 29. X Int. Where was that which was not weighed on the wharf weighed?

Ans. I think the car-load was weighed on the Fitchburg road.

30. X Int. Was there more than one car-load which was not weighed on the wharf?

Ans. I don't think there was; but I couldn't say for certain, for the other lot was weighed in cars. It's a long time for me to recollect.

31. X Int. Which scrap-iron was first weighed, that of Bingham's or that of Samuel?

Ans. I couldn't say.

32. X Int. Describe, as best you can, the appearance of this scrap-iron on the wharf. Was it strewn about or all in one place?

Ans. It was in three places. There was the staging which was

46 on the wharf and went over the hatch of the vessel; then the iron was taken up out of the vessel, the small iron was put in tubs and then was wheeled on this staging into a shed and dumped over on the side, then when they came across the large pieces they were thrown over on the opposite side of the stage; then on the forward or the after part of the steamer—I can't say which way it laid—there was another lot of iron that was dumped on another part of the wharf in the same way. There were two parts to Caswell's wharf, with the dock and water between them; the third pile was on the other part of the wharf.

(Deposition suspended. Resumed 3rd, '85.)

33. X Int. Was all the iron which was taken from the steamer Averill, Bingham's lot and Samuel's lot, comprised in the three piles you have mentioned in your last answer?

47 Ans. That was all I know anything about.

34. X Int. From which one of those three piles did you take Samuel's iron to be weighed?

Ans. From the pile on the other part of the dock, where there was but one pile.

35. X Int. All the iron which you weighed for Samuel's lot, 93 tons and over, came from that pile, didn't it?

Ans. That I couldn't say; I wasn't present at the loading of all the iron on the car or on the teams. In consequence of orders given me by the inspector I don't begin to weigh until the inspector points out the different lots, say, of iron, to be weighed. This iron—I can't say all, for some of it went overboard—was put on cars and teams, which the Gov't had no control over, and was teamed off to be weighed. It was

48 weighed by some of my assistants, or they saw it weighed.

36. X Int. Did the inspector point out to you the pile from which Samuel's iron was to be taken?

Ans. Yes, sir, he did; the single pile on the other side of the wharf.

37. X Int. How big a pile; how high, how broad?

Ans. To the best of my recollection 7 to 8 feet high, parts of it; I couldn't say how broad; some of the larger iron extended down the wharf some length.

38. X Int. How was that pile made up; pretty much of large iron, or some small iron, or how?

Ans. It was made up of small and large together; the largest pieces they tried to keep separate as much as they could.

39. X Int. Was any of that iron taken there in tubs, as you have described the first piled on the staging?

Ans. Yes, sir.

49 40. X Int. Was that iron in the condition that you have described when Mr. Keyes, from the appraiser's office, saw it?

Ans. I couldn't say; I saw Mr. Keyes over there several times.

41. X Int. Did the 93 tons and over of Samuel's lot exhaust the whole of that pile or was some left after his was taken away?

Ans. When I went over to look there was no iron left there.

42. X Int. That is not an answer to my question. Please say whether you know whether there was any iron left after Samuel's lot was taken from that pile.

Ans. No; they were several days in removing this iron and I went over several times. Once they told me they had taken all and I found some more that was covered up with boards and rubbish.

43. X Int. Do you mean to say that the weight of the whole
50 pile on the other part of the wharf was 93 tons 1 cwt. 1 qr. & 26 lbs.?

Ans. I do; according to my return.

44. X Int. And that there was nothing in that pile but Samuel's lot?

Ans. I can't answer that question.

45. X Int. You have said that you yourself did not weigh this iron; how, then, do you know that these 93 tons 1 cwt. 1 qr. & 26 lbs. was the weight of the whole of that particular pile of iron?

Ans. That was the weight that was returned by my assistant weighers and those that had permission to give weights.

46. X Int. Where is that return?

Ans. This is it: "Exhibit D."

47. X Int. "Exhibit D" shows that Samuel's lot weighed 93 tons 1 cwt. 1 qr. 26 lbs., but does not show that that was the weight of the
51 whole pile of the iron on the other side of the wharf. How do you know that that was the weight of that whole pile?

Ans. By my assistant weighers returns, less one & a half per cent. for dirt.

48. X Int. Where are those returns? Produce them.

Ans. I suppose they are in the dock-book.

49. X Int. Produce the dock-book.

Ans. This is it [witness produces a book].

50. X Int. Will you point out in this book the entry or entries which show that the 93 tons 1 cwt. 1 qr. 26 lbs., Samuel's lot, was the whole of that pile on the other side of the wharf?

Ans. [Witness points to two pages in the book.] (Mr. Samuel requests

the commissioner to annex to this deposition, as Exhibit F, a copy of the two pages indicated by the witness, certified by the commissioner.)

51 X Int. Were these goods weighed when they came out of the vessel—this iron?

52 Ans. No, sir.

52. X Int. When and how was this iron weighed—I mean the pile we are talking about?

Ans. I am talking of Samuel's iron, and nobody's else. One car-load was weighed on the scales of the Fitchburg R. R. The balance was weighed on Caswell's wharf, on teams.

53. X Int. Then it was not until the time the iron was about to be removed from the wharf that it was weighed, is that so?

Ans. It was weighed when it was removed.

54. X Int. On the carts of the parties who sent for it?

Ans. Yes, sir.

55. X Int. Who weighed the car-load that was weighed on the scales of the Fitchburg R. R.?

Ans. I don't recollect.

53 56. X Int. Was it a custom-house official or an employe of the R. R.?

Ans. It was an assistant weigher of the custom-house; that is, he saw it weighed or weighed it.

57. X Int. Were you present when that weighing was done?

Ans. I was not.

58. X Int. How do you know that the assistant weigher either weighed or saw that car-load weighed?

Ans. Because I told him to go and attend to it.

59. X Int. And that's all you know about that weighing?

Ans. No, sir; I know that he weighed it because he returned me the gross, tare, and net.

60. X Int. And that is all you know of the weighing of the Fitchburg car-load, is it?

Ans. Yes, sir.

54 61. X Int. You have stated in your cross-examination that this iron was weighed by J. H. Edwards and, you think, George H. Wheeler, and perhaps another whose name you cannot recollect. On the back of the weigher's general return of cargo I find the words "weighed by S. C. Wright;" explain the discrepancy.

Ans. On this steamer, it seems, I had four assistant weighers. Sometimes one assistant weigher would commence to weigh some articles and, before he got through, I would be obliged to put on several different assistant weighers, and on this steamer, it seems by the dock-book [which the witness examines], that S. C. Wright, J. H. Edwards, J. G. Wellington, and I think that I had another one, were at work on the steamer; but I cannot say that all or which of them attended to the weighing of the Samuel iron. Then I had also Mr. Nash, a sworn weigher, to give and make weights, by permission of the collector.

55 Direct resumed by Mr. SANGER:

62. Redirect. By whom was the iron hoisted from the vessel and placed upon the wharf?

Ans. By the stevedore's men.

63. Redirect. At whose expense was this done?

Ans. I don't know; it was done at the expense of the U. S.

64. Redirect. Was it done under the supervision of any customs officer; and, if so, by whom?

Ans. Yes, sir; by U. S. inspectors.

65. Redirect. By whom and at whose expense was the iron loaded into the car and upon the carts?

Ans. I don't know; but not at the expense of the U. S.

66. Redirect. I notice on the dock-book, on the first page on the right-hand top margin, the letters "D. P." What do they stand for?

56 Ans. Duty paid permit.

GEO. F. WHALL.

Deposition of JOHN M. FISKE, in answer to interrogatories propounded by Geo. P. Sanger, esq., of counsel for the United States. (Dec. 2, 1885.)

1. Int. What is your name, age, occupation, and residence?

Ans. John M. Fiske; age, 50; I am the comptroller' principal clerk in Boston custom-house; have been connected with the custom-house since 1863; in 1879 and '80 was special deputy collector, the principal one; reside in Cambridge, Mass.

57 2. Int. Will you look at "Exhibit A" and "Exhibit B;" have you seen them before?

Ans. I have; they are original papers of the custom-house covering an importation of scrap-iron by steam-ship Averill from Westhartlepool, England. The vessel arrived Nov. 4; entry Nov. 12, 1879.

3. Int. Was that entry liquidated; and, if so, when?

Ans. It was; Dec. 24, 1879.

4. Int. What do you mean by liquidated?

Ans. When the amount of duties accruing on the importation has been ascertained. In other words, in this case when the report of the appraisers on the invoice had been made and received at the collector's office, and the weight of scrap-iron had been ascertained and returned by the weigher, then for the first time had the collector's office received the requisite

58 data on which to definitely compute the amount of duties due on the importation.

5. Int. What was the duty liquidated on this entry?

Ans. The rate on which the duties was finally liquidated on the importation was, on 67 tons 11 cwt at one cent per pound, amounting to $1,389.64; on 31 tons 3 cwt. at the rate of $8 a ton, amounting to $248.30; making in all, $1,637.94.

6. Int. Had there been any duties paid before on that entry?

Ans. Yes; the estimated duties amounting to $810.80, being at the rate of $8 per ton on the invoice, and entered quantity, making balance due the Government, $827.14.

7. Int. What is meant by the estimated duty, and when is it determined?

Ans. It is the amount of duties imposed on the entry of merchandise, based upon the description of the same as set forth and described

59 in the invoice and accompanying entry.

8. Int. What is the object of so estimating the duty?

Ans. It is twofold: first to collect what is supposably due the U. S. as duties, and 2nd to enable the importer to get possession of his goods, without which payment he could not.

9. Int. At what stage of the proceedings upon the invoice and entry is the estimated duty determined and paid?

Ans. After the entry has been presented by the importer, and he has made oath to the same, it is compared with the invoice by clerk in charge, who classifies on the invoice as nearly as may be, based upon the description of the goods contained therein fixing the rate of duty; another clerk having the entry and invoice before him computes on the face of the entry
60 the amount of duties due, which, as above stated, is of necessity a mere estimate. The amount of duties so ascertained, after it has passed through the naval office for verification and check, is presented to the cashier's office where the duties are paid. The permit to deliver the goods follows after.

10. Int. In this particular importation what was the estimated duty?

Ans. $810.80.

11. Int. Do the appraisers act before or after the estimated duties are paid?

(Objected to.)

Ans. After.

12. Int. Whether or not that is an invariable rule?

Ans. So far as I know, yes.

13. Int. Who was the appraiser in this case?

61 Ans. The invoice shows T. G. Rice—Thomas G. Rice.

14 Int. Where is Mr. Rice now?

Ans. Confined to his home at Cambridge; he has been ill and absent from the custom-house since August, I think.

15. Int. Whether there has been a report by Mr. Rice on the invoice?

Ans. There is.

16. Int. Whether it is due form?

Ans. There is no prescribed form for a report on an invoice as far as I am aware. In this instance the report appears to give all the necessary data to guide the collector in the liquidation of the entry.

17. Int. Whether or not the entry was liquidated after and in accordance with that report?

Ans. Yes; and in conjunction with the weigher's return.

62 18. Int. Please look at "Exhibit A," that is the entry, and say in whose handwriting the figures in blue are.

Ans. The handwriting of James Duncan, who up to within a very short period occupied the position of one of the liquidating clerks for nearly a quarter of a century.

19. Int. Whether on the paper now shown you and put in evidence, marked "Exhibit E," was received at the custom-house; and if so, when?

Ans. It bears the mark of having been received Jan. 7, 1880.

Cross-interrogatories by JOHN SAMUEL, Esq., for def't:

20. X Int. The Averill arrived on the 4th of November; when did she begin to discharge?

Ans. I am unable to say.

21. X Int. Could she discharge without a permit from the cus-
63 tom-house?

Ans. Not properly.

22. X Int. The permit should be on file at the custom-house, should it not?

Ans. It should be.

23. X Int. Will you furnish the commissioner the date when the Averill commenced discharging?

Ans. I will.

24. X Int. Do you know how long it took the Averill to discharge?

Ans. No; I know nothing about it.

25. X Int. When goods are as you have stated revalued for the ascertainment of the proper duties to be paid, is not that known as a reliquidation of the duties?

Ans. I am not aware that I have spoken of a revaluation.

26. X Int. You have spoken of estimated duties and what I
64 shall call final duties; when what you have called estimated duties are made and afterwards another valuation is made, is not that second ascertainment of duties known as a reliquidation of duties?

Ans. Not as I am aware of. The work of liquidation can only begin after, as above stated, the collector has received the appraiser's report on the invoice and the weigher's return as to dutiable quantity; if, after such liquidation has been made, supplemental reports for any cause have been made either by appraiser or weigher, as the case may be, or both, amending their reports first made, then and in such cases it is found necessary to restate the account, which restatement constitutes a reliquidation. This is sometimes found necessary, for errors sometimes creep into the returns originally made, sometimes in favor of the Government and some-
65 times in favor of the importer; but in either case a reliquidation is found necessary to exhibit the actual amount of duties to which the import was subject.

27. X Int. Is it not the custom on the delivery to the importer of goods on which what you have called the estimated duty has been paid to require him to give security to return the goods or pay an increased duty, if such should be hereafter found to be payable?

Ans. I should say that it was a condition precedent to the delivery of merchandise, certainly in the case of merchandise known as package goods, to require a bond for the redelivery of all but the package known as examination packages; that is, packages ordered up to the appraiser's stores for examination upon demand made by the collector on the importer within a fixed number of days after the reports have been
66 made by the appraiser on the invoice.

28. X Int. You have confined your reply to examination packages; please answer my question as to all goods?

Ans. My impression is that in case of merchandise imported in bulk the strict requirement of the law may not in all cases be made.

29. X Int. Do you not know that the act of Congress prescribes such a bond to be given by the importer to return the goods or pay the additional duty in case of reliquidation at a higher rate?

Ans. I have not the statutes before me, but if my memory serves me rightly it provides that the importer may, if he so elects, give bond to the

collector representing the Government for the redelivery to him
67 of all packages which have been delivered to the importer on entry and payment of duties other than those which on entry had been designated by the collector and sent by him to the appraiser's stores for examination. I understand this giving a bond to be a permissive right which the importer may exercise or not as he may desire.

30. X Int. Was any bond demanded of the importer in this case to return the goods delivered to him or pay the higher duties, should such be imposed?

Ans. I am unable to state without an examination whether a bond was given in this case or not.

31. X Int. Will you examine and see whether or not a bond was given in this case, and if so, produce it?

Ans. I will.

68 (Further examination of witness suspended to Dec. 3rd.)

Witness on third of December in response to 23 X Int. says:

I can not state of my own personal knowledge when the Averill first commenced to discharge her cargo. I understand, however, that it was on the 4th of November, 1879, about 3 o'clock, p. m. The inspector in charge was J. W. Lee; a permit was issued in due course prior thereto to continue discharging at night under the provisions, sec. 2871 & 72, of the Revised Statutes.

And in answer to the 31 X Int. witness says: I have made the examination requested, and here is the bond.

(Witnesses produces a bound volume in which the bond is contained.)

69 32. X Int. Will you furnish to the Commissioner, to be annexed to your deposition as "Exhibit G," a correct copy of this bond?

Ans. I will.

33. X Int. Have you any personal knowledge of the truth of the facts stated in red ink on "Exhibit A," and signed T. G. Rice?

Ans. I have none.

34. X Int. Have you any personal knowledge of the truth of the facts and the correctness of the weights set forth in blue ink on "Exhibit B?"

Ans. I have none.

35. X Int. State why, when the return of weights being dated Nov. 26, 1879, and Mr. Rice's note in red ink on "Exhibit A" is dated Nov. 18th, 1879, the reliquidation in this case, or, as you call it, liquidation, was not made until Dec. 24, 1879?

Ans. There was but one liquidation of the entry, and that took
70 place on the 24th of December, 1879. The weighers' general return bears date Nov. 26, 1879. I am unable from my own knowledge to account for the apparent discrepancy in the dates of the returns of the weighers and that of the appraiser.

(Answer objected to as not responsive.)

There was no unusual delay, seems to me, in the liquidation of this entry. It was undoubtedly taken up by the liquidating clerk in its course or its turn. There may have been, as is not unusual in importations of merchandise in bulk, such as scrap-iron, where the duty is based upon the weight, for questions to arise as to the actual quantity of the merchandise

embraced in the invoice and entry that may have been landed from the importing vessel.

36. X Int. Is that the best answer you can make to my question?

71 Ans. The importation took place six years ago, and I am unable at this date to state the reason for the alleged delay in the liquidation.

I. M. FISKE.

After the adjournment in the p. m. of Dec. 3. 1885.

Mr. Samuel, in behalf of the d'f't, objects to the reception of Exhibits "A" and "B," they respectively not being evidence of the facts set forth on their face.

Deposition of GEORGE KEYES in answer to interrogatories propounded by Geo. P. Sanger, esq., of counsel for the United States, Dec. 3, 1885.

1 Int. What is your name, age, occupation, and residence?

Ans. George Keyes; age 53; I am in the appraiser's depart-

72 ment in the custom-house, Boston; reside in Concord, Mass.

2 Int. How long have you been connected with the appraiser's department?

Ans. Six years last May; since May, 1879.

3 Int. Will you look at "Exhibit A" and state whether or not you made an examination as customs appraiser of the iron described in said invoice; and, if so, where you made it and when?

Ans. I made an examination as examiner in the appraiser's d'p't of the scrap-iron described in "Exhibit A" in November, 1879, at Caswell's wharf, Boston.

4 Int. Where was the iron when you made the examination?

Ans. I made an examination on three or four different times;

73 on the wharf, on the cars and teams, and while it was being discharged from the vessel.

5. Int. By whom was it discharged from the vessel?

Ans. By the stevedores employed for that purpose, not by U. S. officers.

6. Int. When discharged from the vessel where was the iron first put?

Ans. It was partly placed on the wharf and partly loaded on the cars.

7. Int. When did you begin your examination of the iron as examiner of the appraiser's department, if you recollect?

Ans. I do not recollect, but from dates stamped on "Exhibit A" it must have been between 12th and 18th of November, 1879.

8. Int. Why must it have been between those dates?

74 Ans. "Exhibit A" is stamped as having been entered Nov. 12, 1879. The appraiser's report on the iron is dated Nov. 18, 1879, and the examination must have been between those dates.

9. Int. In whose handwriting, if you know, are the date and the report in red ink of the appraiser on "Exhibit A?"

Ans. In my own.

10. Int. Whether or not the date, Nov. 18, is correctly given?

(Objected to.)

Ans. I think it is.

11. Int. Whether or not the writing in red ink is the appraiser's report on that invoice?

Ans. It is.

12. Int. Who was the appraiser and does his name appear on the report?

Ans. Thomas G. Rice; his name is there.

75 13. Int. Are you acquainted with his signature?

Ans. I am; it is.

14. Int. Where is Mr. Rice now and what is his condition of health so far as you know?

Ans. He is at his house in Cambridge and he is a very sick man.

15. Int. How long has he been sick and when was he last at the custom-house attending to business?

Ans. He has been sick nearly four months; he was last at the custom-house on the 20th of August last, I think.

16. Int. What examination did you make of this scrap-iron described in "Exhibit A?"

Ans. I examined it first as it was being discharged from the ves-

76 sel. I made a second examination of it upon the wharf and whilst it was being discharged from the vessel. I made a third examination of it after it was discharged and while it was being loaded on to the teams and cars, and I made an examination of it in company with the appraiser, Mr. Rice himself, and I think an examination was made by myself and another examiner of the appraiser's department together.

17. Int. When you made these examinations, of any of them, was your attention particularly directed to the character of the iron for any purpose; and, if so, for what?

Ans. When I made the first examination I found the iron of such a character that I notified Mr. Rice, the appraiser, and requested him to make an examination of it with me. The character of the iron was such that the duty would be very largely increased above the amount at which

77 it had been entered.

18. Int. What was it that would so largely increase the duty on the iron over what it was entered?

Ans. It was partially new iron instead of old scrap which had been in use and was fit only for remanufactry.

19. Int. Whether or not your attention was particularly directed at the several examinations as to the amount of new iron in the importation?

(Objected to.)

Ans. On the first examination I supposed it was all new iron, on the subsequent examinations there was a doubt in regard to a portion of it.

20. Int. Of what did what you call the new iron consist?

Ans. It consisted of boiler clippings, punchings, bar ends, pieces of beams, and other scrap-iron.

78 21. Int. What do you mean by bar ends and pieces of beams?

Ans. Bar ends and pieces of beams are pieces cut off from bars and beams in the process of manufacture.

22. Int. What was the greatest length of any piece of bar end or beam that you recollect seeing in that importation?

Ans. To the best of my recollection they varied from six inches to four feet in length.

23. Int. And what was the size of bar or beam?

Ans. That is a very difficult matter to recollect; I should say the bars varied from one to three inches in diameter, square and round, and the beams from three to eight or ten inches vertically. They are T-shaped.

24. Int. Did you form an estimate of the proportion of the new
79 to the old in the importation; and, if so, what was it?

Ans. I did in consultation with the appraiser, Mr. Rice. It was two-thirds of new iron and one-third old scrap in the whole importation.

25. Int. Whether or not you put that in writing; and, if so, where?

Ans. I did; in the report in red, upon "Exhibit A."

26. Int. Whether or not you saw Mr. Rice, the appraiser, sign that report?

Ans. I did not, probably.

27. Int. Whether or not, shortly after the date of that report, your attention was called to the quantity of iron in the invoice and the proportion of new and old therein; and, if so, when?

Ans. I don't remember that my attention was called after the date of that report. I do remember, now, that I made a statement in re-
80 gard to this iron in a letter addressed to the appraiser about Jan., 1880, and my attention must have been called to the report to have written that letter.

Cross-examination by Mr. SAMUEL, for def't:

28. X Int. What was your business before you became an appraiser under the U. S. Gov't?

Ans. I was fifteen years in the hardware and metal business in Boston. I was sixteen years in the cotton and cotton manufacturing business in Boston.

29. X Int. Did the hardware business you speak of deal in scrap-iron?

Ans. No, sir.

30. X Int. State whether there was not on the Averill another invoice of scrap-iron consigned to Bingham & Co., and if so, whether the examination and the estimates of the quantity of the new iron that
81 " you made referred to both of the invoices on board the Averill, or to the Samuel invoice alone.

Ans. There was another lot of iron consigned to J. B. Bingham & Co. An examination and estimate of the quantity of new and old iron was made upon each importation separately.

31. X Int. How were the two invoices loaded in the ship; in bulk or separately?

Ans. I cannot say from personal knowledge.

32. X Int. You say you saw the iron discharged from the vessel; whose iron did you see discharged, Samuel's or Bingham's, and when you saw it discharged could you tell whose it was?

Ans. I saw both lots in process of being discharged from the vessel. I could not tell whose lot it was during the process of discharge.

82 33. X Int. Were the invoices of Bingham and Samuel discharged separately or were their respective lots divided after they had reached the wharf?

Ans. They were discharged separately. The officer of the steamer informed me that they were stored separately on board the vessel.

(Mr. Samuel objects to the answer as irresponsive.)

34. X Int. On what part of the wharf did you first see Samuel's lot, and was it then apart and separate from the other iron?

Ans. I should say it was in a building, a shed, when I first saw it, and it was separate on every occasion that I saw it.

35. X Int. How long a time did you spend in looking at Samuel's lot of iron the first time you saw it?

Ans. I did not spend a very long time the first time I saw it be-
83 cause I wanted the assistance of the appraiser on the matter.

36. X Int. Describe the condition of Samuels' iron when you first saw it. Was it in a heap or strewn about? And give as best you can about the dimensions of the heap.

Ans. I have a very distinct recollection of one examination of that iron in which the iron was placed in heaps on the wharf and in the building and was being moved from the heap by men employed to load it on the cars and teams. The heaps were large; I should say five or six feet high and in rows 10 to 20 feet long. I don't know whether this was my first examination or not; probably it was not.

37. X Int. How were the men carrying the iron to the cars or teams; in their hands?

84 Ans. The larger pieces by hand, the smaller by shovel.

38. X Int. Were there pieces that required more than one person to carry?

Ans. There was.

39. X Int. Would there have been any difficulty in shoveling the small pieces into the cart by themselves?

Ans. There would; they were so mixed with the larger pieces.

40. X Int. I understand you that only the smaller pieces were put on the shovel; is that so?

Ans. Yes, sir.

41. X Int. How long were you in examining the second time you examined the iron?

Ans. It is impossible for me to recollect, or on the 3rd or 4th times. I spent portions of six days on the examination of that iron,
85 but how long each time was it is impossible for me to say.

42. X Int. Did you weigh any part of the scrap-iron which you call new?

Ans. I did not.

43. X Int. Then your report in red ink, signed by Mr. Rice, on "Exhibit A" was made from observation only? Is that so?

Ans. Yes, sir.

44. X Int. Did Mr. Rice have any of what you call the new iron weighed?

Ans. Not to my knowledge.

45. X Int. In the red ink report on "Exhibit A" you have estimated certain weights of new punchings, clippings, and bar ends; by new punchings do you not mean the planchet which comes out when the holes are punched in a boiler-plate for rivets?

86 Ans. I do.

46. X Int. And by clippings do you not mean the pieces of

plate which are cut off from plates used in construction of tanks and boilers, &c.?

Ans. I do.

47. X Int. Then the punchings and clipping were the refuse pieces of plate which had been used after manufacture?

Ans. No, sir; not after manufacture; they were the refuse of plates used in the manufacture of tanks, boilers, &c.

GEORGE KEYES.

Mr. Samuel renews his objection to the introduction of "Exhibits A and B."

[Here follows diagram, p. 87.]

88 No. 138 (No. 1).

Oath or declaration to be made by the purchasers or owners where merchandise has been actually purchased.

I, Frederick Pitts, of 23 Great st., Helens, E. C., make oath and declare that I am the owner of the goods, wares, or merchandise in the annexed invoice mentioned and described; that the said invoice is in all respects true; that it contains a true and full statement of the time when and the place where the goods, wares, and merchandise therein mentioned, and which are subject to any ad valorem rate of duty or to any duty regulated or directed by law to be estimated or based upon the value of the square yard or of any other specified quantity or parcel were purchased, and the actual cost and quantity thereof, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice but such as have been actually allowed thereon; that the currency in which
89 said invoice is made out is the currency which was actually paid, or is to be paid, for said goods, wares, and merchandise; and that no different invoice has been or will be furnished to any one. I further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of New York in the United States of America.

FRED. PITTS.

Sworn at No. 53 A Old Bond street in the city of London, this 21st day of October, 1879, before me.

J. NUNN,
A Commissioner to administer oaths in the Supreme Court of Judicature in England.

90 No. 140.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA, LONDON.

I, Joshua Nunn, deputy consul-general of the United States of America for Great Britain and Ireland, at London, do hereby certify that on this 21st day of October, A. D. 1879, the within invoice, numbered 1140, in which are mentioned and described certain old, heavy wrought scrap-iron, amounting, with the charges thereon, to the gross sum of £418 1s. 4d, was

produced to me by Frederick Pitts in person, the owner of the goods, wares, and merchandise therein mentioned, who thereupon declared in writing, in my presence, that it was intended to make entry of said goods, wares, and merchandise at the port of New York, in the United States of America. I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself
91 to be, and that the actual market value or wholesale prices of the goods, wares, and merchandise described in said invoice, in the principal markets of the country, and at the time of exportation, are correct and true (or as set forth in the column of consular corrections of estimates).

In testimony whereof I have hereunto set my hand and affixed the seal of the consulate-general, at London, in triplicate, this day and year next above written.

[SEAL.] J. NUNN.

(Endorsed:) No. 1140. Shippers, Fred. Pitts & Co., ship Averill. *To Messrs. E. Samuel & Co. Amount, £418 1s. 4d. Date, 21st October, 1879.

[Here follow diagrams, pp. 92 to 96 inclusive.]

97 EXHIBIT E.

(On margin:) Dictated. J. M. P. 10 Jan'y. (Stamp:) Collector's office. Rec'd Jan'y 7, 1880. Custom-house, Boston.

EDWARD SAMUELS & CO.,
332 *Walnut Street, Philadelphia, January* 6, 1880.

COLLECTOR OF THE PORT,
Boston, Mass.:

DEAR SIR: We last had the pleasure of addressing you on Decem. 15th, to which we since have your reply of Decem. 23d. We are now informed by Mess. Stone & Downer, the brokers thro' whom we have done this business, that we have been assessed 827\frac{14}{100}$ on the scrap-iron imported p'r S. S. "Averill."

We should be pleased to have you advise us upon what basis this liquidation was made; whether the man who made it is prepared to swear that the scrap which he liquidated as ours was not that of E. P. Cutler & Co.'s, No. 10 Oliver street, of your city?

We are advised by Mess. Hondlette, Ellis & Co., to whom we have
98 sold this scrap-iron, that the cargo was mixed, and that it was impossible to say what part of it came from Cutler's and what part came from ourselves, they having bought both lots.

We have written this evening to get their testimony as to what the quality of this iron was and its shape, as it is quite impossible that it should be anything other than scrap, both in the intent and spirit of the law.

We should also like an explanation of the reason why a cargo arriving on Nov. 4th, and discharged on or about that date, should not be liquidated until Dec. 24th or any advice given to our brokers that it was other

* If sent on consignment the following must be added: Consigned to . For sale on account.

than scrap-iron; because, had this been done, the iron should not have been removed, and we should have sent it back to England in bond.

We do not propose to pay this duty without having the matter thoroughly examined, as the ruling cannot be but unjust, as we shall be prepared to prove.

Yours, very truly,

EDW'D SAMUEL & CO.

[Here follows diagram, p. 99.]

100 *Bond of importer on delivery to him of packages not designated for examination.*

Know all men by these presents that we, E. Samuel & Co., of the city and State of New York, as principal, and Cutler Downer, of Somerville, State of Massachusetts, as sureties, are held and firmly bound unto the United States of America in the sum of forty hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Witness our hands and seals this twelfth day of November, one thousand eight hundred and seventy-nine.

Whereas E. Samuel & Co. have this day made entry of certain goods, wares, and merchandise imported in the Averill, from West Hartlepool; and whereas the collector of customs at the port of Boston has desig-
101 nated the packages or quantities, as required by the laws of the United States, as follows:

Ex. on wh'f.

Lot scrap wrought-iron.

$810.80.

out of the invoice of said goods, wares, and merchandise, to be opened and examined according to law, and has caused the same to be sent for that purpose to the public stores; and whereas the residue of said goods, wares, and merchandise, to be mentioned in the said entry has, at the request of said importer, been delivered to them:

Now, the condition of the above obligation is such, that if the said importer shall redeliver the residue of the said goods to the order of the collector, provided he shall require the same, at any time within ten days after the packages or quantities so as aforesaid sent to the public store or designated for appraisement shall have been appraised and re-
102 ported to him; and also if, in the mean time, the said packages or quantities, all and every of them, so delivered as aforesaid, shall not be opened or changed except with the consent of the collector, given in writing, and then in the presence of one of the inspectors of the customs, then this obligation to be void; otherwise to remain in full force and virtue.

[SEAL.] E. SAMUEL & CO.,
WM. MONROE, *Att'y.*

Sealed and delivered in the presence of—

C. G. TURN[illegible]

CUSTOM-HOUSE, BOSTON, MASS.,
December 3, 1885.

I hereby certify the foregoing to be a true copy of the original on file at this office.

L. SALTONSTALL,
Collector.

(On the margin :) J. M. F.

103 OFFICE OF UNITED STATES ATTORNEY,
EASTERN DISTRICT OF PENNSYLVANIA,
Philadelphia, Nov. 21, 1885.

JOHN SAMUEL, ESQ.,

DEAR SIR: You will please notice that in the case of the United States vs. Edward Samuel, trading as Edward Samuel & Co., No. 30, May sessions, 1880, U. S. district court, testimony of the following-named witnesses will be taken before Henry L. Hallett, esq., U. S. commissioner for the district of Massachusetts, at his office, 94 Government Building, Post-Office Square, Boston, Mass., on Wednesday the 2nd day of December next, at 10 o'clock a. m., viz: John M. Fiske, Boston custom-house; Joseph H. Barnes, deputy collector; Thomas J. Rice, appraiser;
104 Charles K. Pinkham, appraiser's office; George Keyes, formerly appraiser's office; George F. Whall, formerly weigher, custom-house; James Duncan, formerly liquidating clerk; William Monroe, custom-house broker, who made entry for Samuel & Co.

Very respectfully,

JOHN K. VALENTINE,
U. S. Attorney.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

David A. Henderson, being duly sworn, says that he served a notice, of which the above is a copy, by handing the same to John Samuel, esq., personally, at his office, No. 216 South Third street, in the city of Philadelphia, on the 21st day of November, 1885.

DAVID A. HENDERSON.

Sworn and subscribed before me this 21st day of November, 1885.

SAMUEL BELL,
U. S. Commis'r.

105 BOSTON, *Dec.* 3, 1885.

Received of N. P. Banks, esq., U. S. marshal for the district of Massachusetts, the sum set against our names respectively, for travel and attendance as witnesses on behalf of the United States before Henry L. Hallett, esq., U. S. commissioner, taking our depositions in the case of United States against E. Samuels, trading as E. Samuel and Co., pending in the district court of the United States for the eastern district of Pennsylvania; one dollar and sixty cents of this sum was received by us each as travel and attendance for the first day, paid us in advance by the marshal when we were summoned.

Names of witnesses.	No. of days attendance.	Travel miles.	Amount received.
J. M. Fiske	2	1	3.10
Geo. F. Whall	2	1	3.10
George Keyes	2	1	3.10

106 United States of America:

The President of the United States of America to the marshal of [SEAL.] our district of Massachusetts or either of his deputies, greeting:

You are required to summon John M. Fiske, comptroller; Joseph H. Barnes, deputy collector; Charles K. Pinkham, George Keyes, appraiser's office; Gerge F. Whall, formerly weigher; James Duncan, formerly liquidating clerk, custom-house, Boston; William Monroe, custom-house broker, if they may be found in your district, to appear before Henry L. Hallett, esq., commissioner of our circuit court of the United States at his office in said Boston, within and for the district of Massachusetts on Wednesday the second day of December next, at ten o'clock in the forenoon of the same day, in their proper person, to testify and give evidence
107 in behalf of the United States in the case of U. States vs. Edward Samuel, trading as Edward Samuel and Co., pending in the U. S. district court for the eastern district of Pennsylvania, and not to depart the said court without leave of the commissioner or district attorney first had and obtained.

And warn the said witness that for default and non-appearance they will have to abide the pains and penalties of the law in that behalf made and provided.

Hereof fail not and make due return of this writ, with your doings thereon, unto our said court, as soon after the service thereof as may be.

Witness the Honorable Morrison R. Waite, at Boston aforesaid, the thirtieth day of November, in the year of our Lord one thousand eight hundred and eighty-five.

ALEX. H. TROWBRIDGE,
Deputy Clerk.

108 UNITED STATES OF AMERICA,
Massachusetts District, ss:

BOSTON, *Nov.* 30, 1885.

Pursuant hereunto I have this day summoned the within named John M. Fiske, Joseph H. Barnes, Charles H. Pinkham, George Keyes, George F. Whall, and William Monroe, to appear at the court as herein directed by giving in hand to each of them a true and attested copy of this receipt and paying to each of them one dollar and sixty cents for their attendance and travel. And on the same day I summoned the within named James Duncan, by leaving at his last and usual place of abode in hand to his wife, Mrs. Sophia Duncan, a like copy, together with one dollar and sixty cents for his attendance and travel.

N. P. BANKS,
U. S. Marshal.

Fees:

Ser. and copies	7.00
Tr. & al	.22
P'd witness	11.20
	18.42

109 (Endorsed:) 508. The United States vs. Edward Samuel, trading as Edward Samuel & Co. Subpœna to witness. [Seal of marshal.]

110 Defendant objected to Exhibits A, B, and D being given in evidence, because—

I. There is no evidence that the liquidation of what is called "new iron" was made by the collector of the port of Boston.

II. Because the said exhibits are not sufficient evidence of the quantity of said "new iron."

III. Because there is no sufficient evidence of the quantities of said new iron.

(Objections overruled and exhibits admitted.)

The plaintiff then rested.

Thereupon counsel for defendants moved the court, at this stage of the case, to instruct the jury to find for the defendants.

111 (Motion overruled; exception for defendants.)

The defendants then called and examined the following witnesses:

CHARLES W. MATTHEWS, sworn:

Mr. VALENTINE. I object to the examination of this witness for the reason that the counsel for the defendants in his opening stated that there was no protest within the time allowed by law.

(Objection overruled, and exception.)

(It is admitted that there was no protest.)

By Mr. SAMUEL:

Q. What is your business?

A. I have been an iron broker for about thirty years, and conducted business to a very large extent.

112 Q. You have bought and sold many thousands of tons of iron?

A. Yes, sir.

Q. Be good enough to say what are punchings and clippings?

(Objected to, unless it is shown that this witness saw the particular iron in question and knows about it.)

The COURT. The witness may describe what are known in the trade by punchings and clippings.

A. The punchings are punchings of boiler-plate and tank-iron; and the clippings are the clippings of plate in process of manufacture in the manufacture of tanks and boilers.

Q. When a punch comes down into a plate of iron it cuts a hole out of it, and the piece of iron which comes out of that hole is called a punching, is it not?

A. That is correct.

Q. What is a clipping?

113 A. That is the part cut off in shaving the plate properly, cutting it to its proper size.

Q. When plates are manufactured into boilers, or cut into size for the sides of vessels, or tanks, as I understand it, the punchings and clippings are what is left when the work is done; is that so?

A. That is correct.

Q. They are the refuse?.

A. Yes, sir; they are the refuse?

Q. To what use can these punchings & clippings be put?

A. None, except to be remanufactured.

Q. (Samples shown witness.) What are these?

A. These are punchings. These are the pieces of iron which are pushed out by the machine.

Q. (Samples shown witness.) What are these?

A. These are clippings of boiler-plates.

114 Q. In a cargo of 93 tons and over of mixed iron lying on a wharf in piles or heaps, and being carted off, or coming out at the side of a vessel, would it be possible to form a fairly accurate judgment or estimate of the quantity of bar ends, and clippings, and punchings in such a cargo or not?

(Objected to, because the witness did not see the iron in question and does not know anything about it.

Objection overruled.)

Q. Would it be possible for any person, out of a lot of iron of over 93 tons discharged from a vessel and lying on a wharf in heaps of five or six feet high and twenty feet long, to form a fairly accurate judgment as to the amount of bar ends, boiler clippings, and punchings in such a lot?

A. I should say not.

115 Q. You say that after your experience in dealing in this thing for many years?

A. Yes, sir.

Q. What are bar ends?

A. The ends of bars that are in process of rolling. When the bars are a little longer than required, or when there is some defect in the iron, the ends are cut off and thrown into the waste pile.

Cross-examined:

By Mr. VALENTINE:

Q. You said these punchings and clippings were what you call boiler-iron.

A. Boiler-plate or tank-iron; what we call, as a general thing, boiler-iron or plate-iron.

Q. That is new?

A. At the time, of course.

Q. It is new at the time these punchings and clippings and bar ends are cut off?

A. Yes, sir; just made.

116 By Mr. SAMUEL:

Q. That is to say the plate was new?

A. Yes, sir.

RODWIN WISTAR, sworn.

By Mr. SAMUEL:

Q. What is your business?

A. I am an iron broker, commission merchant, and dealer; I have been in business about 18 years.

Q. How much experience have you had in dealing in scrap-iron?

A. A very great deal; thousands of tons of it.

Q. Describe chippings and punchings.

A. Chippings are made from boiler-plate in their manufacture into boilers or in the manufacture of ship-plates. A portion of the plates is cut off to make a large plate fit anything it is required to fit, and the refuse is taken away, and that we call clippings. They come
117 from tank-iron as well as boiler-iron. Punchings are made from boiler-plate and from tank-iron in the construction of various kind of work.

Q. (Samples shown witness.) What are these?

A. These are punchings from boiler-plates.

Q. (Samples shown witness.) What are these?

A. They are principally boiler-plate clippings, made by cutting off those parts of the iron which are not wanted in the manufacture of the boiler.

Q. What are they useful for?

A. Only for the purpose of remanufacture.

Q. What are bar ends?

A. Bar ends are refuse ends of a bar cut off at the mill because defective and not merchantable.

Q. To what use can they be put?

A. Only to remanufacture.

118 Q. In a lot of over 93 tons of scrap-iron piled on the wharf, coming from a vessel, as you have heard me read to Mr. Matthews, is it possible to approximate or fairly estimate the quantity of the bar ends and boiler clippings and punchings?

A. I would say not.

By the COURT:

Suppose you were to see it unloaded from the vessel; see it in the heap; see it weighed and carted away, would it then be practicable to form a just estimate of the two descriptions of iron?

A. No; it would not.

Q. Under such circumstances could one form a reliable judgment whether the iron was principally of one kind and not of the other?

A. He might form an estimate in his own mind whether there was a certain amount of boiler plate clippings. He might do that, but
119 as to giving any reliable figures he could not do it.

Q. What do you mean by reliable figures?

A. I should not think that he could come anywhere near an approximation.

Q. What do you mean by near? Do you mean he could not come within a hundredweight?

A. Oh, my, no; he could not come within tons and tons.

Cross-examined:

By Mr. VALENTINE:

Q. Could he not form an estimate whether it was one-half old and one-half new, or three-fourths old and one-fourth new?

A. No, sir, he could not, and I will tell you why from my stand-

point. If the scrap-iron is composed of a great many articles,
120 one old shaft might weigh as much as a big heap of punchings and clippings; and old boiler-plate will weigh very heavy and so will various other kinds of scrap-iron that is imported, as old rails, for instance.

Q. But if he saw it, could he not tell?

A. This old shaft might be in the heap.

Q. Could you tell unless you did see the heaps and knew?

A. I would not buy a pile of scrap that way. I have declined to purchase piles of scrap in that way, because I could not calculate them.

Q. Then purchasers do form an estimate whether the iron is old or new in making a purchase?

A. Of course, we have no questions about old or new in making a purchase.

Q. Why is it you said that you did not purchase without forming an estimate of the scrap?

121 A. I just meant this, if I examined a pile of scrap with a view to buying it, it might come up in the purchaser's mind that there was certain scrap-iron in the pile which was more valuable than the other.

Q. Is not the new more valuable than the other?

A. Not necessarily.

Q. Is it not likely to be?

A. No, sir; good scrap-iron is a merchantable article; we do not take any particular consideration of what it is composed.

Q. What you mean by clippings and punchings and bar end is from new iron?

A. Yes, sir.

By Mr. SAMUEL:

Q. As a matter of fact, are not these punchings and clippings of less value than other scrap-iron?

The COURT. That is immaterial.

122 WILLIAM G. HOOPES sworn.

By Mr. SAMUEL:

Q. What is your business?

A. Iron broker; have been so 25 years.

Q. Did you have much experience in scrap-iron?

A. I have.

Q. State to the jury what are clippings and punchings and bar ends.

The COURT. I understand that is not controverted.

Mr. VALENTINE. No, sir.

Q. Are they fit for any purposes, except to remanufacture?

A. No, sir; that is all the purpose they can be used for.

Q. In a lot of 93 tons of scrap-iron, distributed as explained in
123 my questions to former witnesses, is it possible to approximate or fairly estimate the quantity of bar ends and punchings and clippings?

A. No, sir; I should think it was impossible to make a near approximation.

No cross-examination.

Mr. SAMUEL. I propose to show the same facts by the defendant.

The COURT. As to the facts not controverted, the jury will take them as they receive them from the witnesses; but as to the questions whether an estimate can be made, about which there is controversy, you may call the defendant.

EDWARD SAMUEL sworn.

By Mr. SAMUEL:

124 Q. What is your business?

A. Iron merchant and dealer since 1866.

Q. You have had large experience with scrap-iron?

A. Very large; I have bought and sold many thousands of tons.

Q. Be good enough to state whether it would be possible to make a fairly approximate estimate of the quantity of punchings, clippings, and bar-iron in a pile of scrap-iron such as this was.

A. In my judgment it would be utterly impossible.

Cross-examined:

By Mr. VALENTINE:

Q. When you purchase scrap-iron, do you take into consideration the question whether it is composed of punchings, clippings, and bar-iron?

A. We generally hope that there will be none in it.

125 By the COURT:

Q. You say you generally hope that there is none in it. Do you consider that in determining whether you will make a purchase of scrap-iron?

A. Hardly; because scrap-iron is supposed to be a multitudinous collection of things, and the only specification we make in purchasing is by classification, known as No. 1 and No. 2.

Q. What is No. 1?

A. No. 1 consists of all grades and pieces of iron that are larger than a quarter of an inch round or square.

Q. That is, it is rated according to size?

A. Yes, sir; it is rated according to size, and not from the material of which it is made or the shape of it.

By Mr. VALENTINE:

126 Q. You say you hope that there is no punchings, clippings, or bar-iron in the lot. Do you form an estimate on the subject?

A. None whatsoever.

Q. You do not take it into consideration at all?

A. No; not if I understaad your question aright. If I purchase a lot of scrap-iron from a man I expect to get everything in it, and I do not take into consideration the question whether it has one ton or five tons of punchings or one ton or five tons of clippings or in fact anything, except that it be wrought-iron.

Q. But you do take into consideration the question of size?

A. Yes, sir; that was specified in the purchase.

Q. But not the question whether it contains punchings or clippings?

A. No; because they may be of any size?

127 By Mr. SAMUEL:

Are punchings necessarily from new plates?

A. Not necessarily.

Defendant rests.

Evidence closed, and the plaintiff presented to the court certain points on which the following instructions to the jury were requested, to wit:

First. That as no protest was made in this case the ascertainment and liquidation were final and conclusive as to the amount of duty and therefore their verdict should be for the plaintiff.

Second. That as no appeal was made in this case the ascertainment and liquidation were final and conclusive and therefore their verdict should be for the plaintiff.

128 And the said court, in answer to said points, charged the jury as follows:

"In the latter part of the year 1879 the defendant imported a cargo of iron and entered it at the port of Boston, paying thereupon the duty to which it was subject as 'scrap-iron,' on payment of which duty the iron was delivered by the Government to the defendant.

The Government officers subsequently ascertained and liquidated the duty upon the cargo, treating one-fourth as what is denominated in the statute 'scrap-iron,' and the remaining three-fourths as another quality of iron and subject to a higher rate of duty. It was therefore contended that this ascertainment and liquidation rendered the defendant

129 liable to the Government for the sum of $827 $\frac{14}{100}$, and this suit was brought to recover that amount."

"It is claimed by the Government that the ascertainment and liquidation of the duty on the cargo is final and conclusive; that there is no question of fact involved in the case, and that as matter of law the fact of this ascertainment and liquidation having been shown, the Government is entitled to a verdict."

"I have been requested to charge you in accordance with this position, but I decline to give that instruction. It is unnecessary to state the view I entertain of the law in this respect, as the question has been decided by the circuit court of this district, and the decision is binding in the present case. I therefore instruct you that the defendant is not bound by

130 the liquidation and ascertainment of the Government authorities at the port of Boston."

And thereupon the counsel for the said plaintiff did then and there except to the aforesaid charge and opinion of the said court in answer to the said points; and inasmuch as the said charge and opinion so excepted to do not appear upon the record, the said counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion of the said court and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the plaintiff, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this first day of October, A. D. 1886.

WM. BUTLER. [L. S.]
[L. S.]

131 (Endorsed:) District court U. States, eastern district of Pennsylvania. May sessions, 1880, No. 30. Bill of exceptions. The United States of America. vs Edward Samuel, trading as Edward Samuel & Co. Presented July 2, '86. W. B.

132 THE UNITED STATES OF AMERICA, plaintiffs in error,
vs.
EDWARD SAMUEL, TRADING AS EDWARD SAMUEL & Company, defendants in error.

The plaintiff in error assign' for error the following causes:
Because the learned judge erred

1. In holding, there having been no protest and no appeal, that the ascertainment and liquidation was not final and conclusive in the case.

2. In admitting evidence to show the dutiable value of the goods, to effect the ascertainment and liquidation, there having been no protest and appeal.

133 And the plaintiffs in error pray that the judgment entered in this case be reversed, annulled, and altogether held for nothing, and that they may be restored, &c.

JOHN K. VALENTINE,
U. S. Attorney, for Plaintiff in Error.

134 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

I, Charles S. Lincoln, clerk of the district court of the United States for the eastern district of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of the record and proceedings in the said court in a certain action of trespass on the case therein lately depending wherein the United States of America is the plaintiff and Edward Samuel, trading as Edward Samuel and Company, is the defendant, as full and entire as the same now remains of record in said court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said district court at Philadelphia, this fourth day of October, A. D. 1886, and in the one hundred and eleventh year of the Independence of the said United States.

[SEAL.] W. W. CRAIG,
Pro Clerk.

135 And afterwards, to wit, on this 4th day of October, A. D. 1886, this cause coming on for argument upon record of the district court, and having been argued by the respective counsel for plaintiff and defendant, after consideration by the court it is ordered, adjudged, and decreed that the judgment of the district court of the United States in favor of the defendant be, and the same is hereby, affirmed.

136 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk of the circuit court of the United States of erica for the eastern district of Pennsylvania, in the third circuit, do

hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of The United States of America, plaintiff in error, vs. Edward Samuel, trading, &c., defendant in error, No. 3, October session, 1886, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 12th day of May, in the year of our Lord one thousand eight hundred and eighty-seven and of the Independence of the United States the one hundred and eleventh.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

(Indorsement on cover:) No. 386. The United States, plaintiff in error, vs. Edward Samuel, trading as Edward Samuel & Company. E. Pennsylvania. C. C. U. S. Filed August 30, 1887.